STATE OF MICHIGAN

COURT OF APPEALS

JODIE JOURNEY, Plaintiff-Appellant,	UNPUBLISHED July 14, 2011
v	No. 298263 Genesee Circuit Court
BEECHER COMMUNITY SCHOOL DISTRICT, Defendant-Appellee.	LC No. 08-088075-CZ

Before: MURRAY, P.J., and FITZGERALD and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition in this employment termination case. We reverse and remand.

I. FACTS AND PROCEEDINGS

The facts are relatively straight forward. The parties entered into an employment contract under which plaintiff was hired as the health coordinator for a two-year period from July 1, 2004, to June 30, 2006. The contract provided that it would terminate automatically should plaintiff not possess the legal qualifications necessary to perform her duties. Otherwise, the contract could be canceled by defendant "at any time for just cause." In April 2006, defendant notified plaintiff that when her contract expired, it would not be renewed. However, defendant later reversed its decision and notified plaintiff in June 2006 that the previous notice had been rescinded and she was reasonably assured "continued employment as you are recalled to the same or a similar position." Consequently, defendant apparently prepared a new contract for a one-year period from July 1, 2006, to June 30, 2007, though this contract was never executed. However, it is undisputed that plaintiff remained employed by defendant during the 2006/2007 school year.

In the spring of 2007[1], defendant approved changes to its Early Childhood program for the 2007/2008 school year. It determined that to better meet the needs of students and their

[1] While plaintiff formally gave notice in May 2007 that she would be on medical leave from June 24 through September 3, 2007, her supervisor testified that plaintiff had been out on leave since December 2006.

families, it had to make certain changes, which included "Change job descriptions from Coordinators to Team Leaders with content expertise of Education, Health, Parent Involvement, Social Work, Disabilities." On May 30, 2007, defendant notified plaintiff that her position as health coordinator had been "reorganized into a new position entitled Team Leader." Plaintiff was advised that the "position will be posted within the week."

On August 10, 2007, as plaintiff's medical leave period neared its end, plaintiff notified defendant that although her medical leave exceeded the 12 weeks allowed under the Family Medical Leave Act, see 29 USC 2612(a)(1)(D), she intended to return to her position as health coordinator on September 4. However, ten days later, on August 20, 2007, defendant notified plaintiff that because the health coordinator position had been eliminated and because she had not applied for the replacement position as team leader, the team leader position had been awarded to "a qualified applicant."

Plaintiff filed a complaint alleging claims for breach of express and implied contract (termination without just cause) and violation of the Family and Medical Leave Act (FMLA), 29 USC 2601 *et seq*. After the case returned to state court,[2] defendant filed a motion for summary disposition with respect to plaintiff's breach of contract claims. Defendant argued that plaintiff did not have an action for breach of an express contract because her contract had expired. Defendant further argued that plaintiff did not have an action for breach of implied contract because she was not terminated. Her "position was eliminated due to significant restructuring of the Head Start program" and she did not apply for a newly created position. Plaintiff opposed the motion, claiming that the employment contract had been renewed and that, while the reorganization resulted in new titles for various positions, no jobs were eliminated and everyone remained employed except plaintiff, who was thus terminated. Pursuant to an order entered on August 24, 2009, defendant's motion was denied.

In November 2009, defendant filed a second motion for summary disposition. In its second motion defendant argued that a two-year contract would violate the statute of frauds, which requires that any contract that is not to be performed within one year must be in writing. In addition, MCL 380.1229 of the Revised School Code requires that contracts be in writing. At best, an expired contract is deemed to have been renewed for only one year. Therefore, plaintiff's contract, which expired in June 2006, was renewed for a one-year period that expired in June 2007.

Plaintiff agreed that under § 1229, an expired contract is deemed to have been renewed for one year only. However, she argued that after the one-year renewal period expired, the renewed contract was itself renewed for one year every year until it is formally not renewed. Because defendant had never given notice of nonrenewal, it continued to be renewed for the

[2] Shortly after the complaint was filed, defendant removed the action to federal court. Defendant filed a motion for summary judgment and in June 2009, the federal court entered an order granting defendant's motion to dismiss the FMLA claim, and declining to exercise supplemental jurisdiction over the remainder of plaintiff's state law claims.

2007/2008, 2008/2009, and 2009/2010 school years. If the contract had been terminated, it was not in accordance with its terms and thus the termination was arbitrary and capricious.

The trial court heard argument on March 29, 2010. It ruled in part as follows:

> First of all, Jodie Journey had a two-year contract. The [RSC] says that in her situation a contract is not to exceed three years. The [RSC] also says the contract can be renewed for an additional one-year period, and there is law that talks about if they fail . . . to give Notice of Termination, then it's automatically renewed. But when the statute says that the contract can be renewed for an additional one-year period, that stays within the three-year rule that the [RSC] declares.
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> And I'm going to rule against Mr. Fletcher's client because if we did perpetual one-year renewals, then we begin to violate the three-year rule of the [RSC]. And, also, . . . [t]he [RSC] 380.1229(2) states employment shall be by written contract, and it goes on and talks about not to exceed three years . . . . The last sentence is relied on by plaintiff to say that there is renewal, and the last sentence [reads] "The contract is renewed for an additional one-year period." Now, I got caught up on a word and the word was an. I looked up the word an in a couple of dictionaries, and basically it means one.
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> For example, in one dictionary, . . . it uses illustrations, an egg, an hour, and it does not speak in the plural which would justify successive renewals. Then I looked at [another dictionary] where it says in old English an means one. So, to me what that means is that when the [RSC] says a contract is renewed for an additional one-year period, that means there's only one additional one-year period.

Plaintiff filed a motion for reconsideration, which was denied on May 12, 2010. This appeal followed.

II. ANALYSIS

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). Statutory interpretation is a question of law that is also reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003).

At issue in this case is § 1229(2) of the Revised School Code, MCL 380.1229(2), which provides:

> The board of a school district or intermediate school district may employ assistant superintendents, principals, assistant principals, guidance directors, and other administrators who do not assume tenure in that position . . . . The employment shall be by written contract. The term of the employment contract shall be fixed by the board, not to exceed 3 years. The board shall prescribe the duties of a person described in this subsection. If written notice of nonrenewal of

> the contract of a person described in this subsection is not given at least 60 days before the termination date of the contract, the contract is renewed for an additional 1-year period.

The pivotal question is whether the one-year renewal provision of the statute allows for multiple, continuous renewals, or just one renewal. The trial court held that only one renewal was permitted, and so at the time of the alleged breach, there was no contract to breach. Although we agree that this is what the statute says, we must reverse on the basis of *Smiley v Grand Blanc Bd of Ed*, 416 Mich 316, 329-330; 330 NW2d 416 (1982). The Court in *Smiley* held that the one-year renewal provision is ambiguous and, when the parties continue their employment relationship after the employment contract expires without executing a new contract as required by law, the terms of the original contract govern their relationship until there is notice of intent not to renew, until a new written contract is executed, or until the parties, by mutual agreement, alter one or more terms of the original contract. The Court specifically held with respect to the renewal provision:

> We believe that the final sentence of MCL 380.132(2); MSA § 15.4132(2) is susceptible of either interpretation. It can fairly be read to provide that only a single extension can result from a failure to give notification of nonrenewal. It can fairly be read to provide that continuous renewals can result from a failure to give notification of nonrenewal.
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> Where such ambiguity exists, we must provide a reasonable interpretation that is consistent with the purposes of the act and that does not routinely do violence to the intent of parties who enter into contracts under the statutory provision. In this way, we can fulfill our obligation to interpret the statute in accordance with the will of the Legislature.
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> These principles lead us to the conclusion that the final sentence of MCL 380.132(2); MSA § 15.4132(2) should be interpreted to give continuing effect to an original written contract that is neither renewed nor abrogated over the course of several years. Where a school district once fails to sign an administrator to a new written contract, the extension clause of MCL 380.132(2); MSA § 15.4132(2) serves to protect the administrator from the vagaries that attend employment under an oral contract of uncertain terms. There is no reason that a district that repeatedly fails to sign the administrator to a new written contract should be rewarded with different treatment under the statute. [*Smiley*, 416 Mich at 329-331].

Although we agree with the trial court that "an additional year" means one additional year, we are nevertheless bound to follow the precedent of our Supreme Court. *Pellegrino v AMPCO System Parking*, 486 Mich 330, 354 n 17; 785 NW2d 45 (2010). Defendant's attempts to distinguish *Smiley* are in vain, for though the case dealt with tenure, the Court squarely addressed the statutory language at issue and it is the Court's reading of the statute, rather than the facts in that case, that guide our decision. *People v Bellanca*, 43 Mich App 577, 580; 204 NW2d 547 (1972).

Defendant's remaining arguments are also to no avail. The statute of frauds, MCL 566.132, is not violated because the original contract was in writing, and the automatic renewals were for a year and were simply a continuation of the written contract. *Smiley*, 416 Mich at 334 (recognizing that plaintiff's employment after renewal "continued to be governed by his last written contract . . . .") and *Sines v Wayne Co*, 58 Mich 503, 506-507; 25 NW 485 (1885) (year-to-year extension of one year written employment contract did not violate statute of frauds). That the renewals were for one year also caused no difficulty with the statute of frauds, as each successive extension was for employment of one year or less. *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 441; 505 NW2d 275 (1993). Hence, the writing requirement of the statute is satisfied.

Additionally, the three year contract term requirement under MCL 380.1229(2) was not violated because the term of the written contract between plaintiff and defendant was less than three years. The fact that the contract was renewed by *operation of statute* beyond three years from the date of the original contract does not mean that the board exceeded its authority when it entered into a two year contract with plaintiff, or that it could not be bound by extensions that go beyond three years from the date of the contract.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

Plaintiff may tax costs, having prevailed in full. MCR 7.219(A).

/s/ Christopher M. Murray
/s/ E. Thomas Fitzgerald
/s/ Amy Ronayne Krause